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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/043,904 | 01/11/2002 | William F. Strutz | EISE096-2/LWT | 7217 |
| 26720 | 7590 | 02/08/2005 | EXAMINER | |
| LOCKE LIDDELL & SAPP LLP ATTN. DOCKETING 600 TRAVIS #3400 HOUSTON, TX 77002 | | | LARSON, LOWELL A | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3725 | |

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/043,904

Applicant(s)

STRUTZ ET AL.

Examiner

Lowell A Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42 to 144 is/are pending in the application.
- 4a) Of the above claim(s) 105 to 118 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42 to 61, 66, 69 to 72, 76 to 104 and 119 to 144 is/are rejected.
- 7) ☒ Claim(s) 62 to 65, 67, 68 and 73 to 75 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>1/11/2002</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 61, 66, 69 to 72, 76 to 82 and 84 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt (newly cited).

These claims fail to distinguish over the disposal operation disclosed by Schmidt in which lack of food waste in the unit is detected by sensing a decrease in the motor current and consequently terminating the operation.

3. Claims 130, 132, 133 and 135 are rejected under 35 U.S.C. 102(b) as being anticipated by Sones et al. (newly cited).

These claims fail to distinguish over the disposal operation disclosed by Sones et al. in which motor speed is decreased in response to the detection of excessive vibrations. See column 3, lines 36 to 50.

Claim Rejections - 35 USC § 103

4. Claims 42 to 60, 85 to 96, 98 to 104, 119 to 129, 131, 134 and 136 to 144 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sones et al.

Sones et al. discloses a disposal unit in which the motor speed can be varied by changing the setting of control 50 to obtain optimum grinding action. The control 50 is capable of being operated to produce the conditions required by these claims, and to operate the control in such a manner is considered to be merely an obvious exercise of the user's discretion in order to achieve any desired grinding result. The particular type

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of conventional, speed controllable motor employed in the disposal unit, as recited in Claims 43 and 44, and the particular speeds of operation, as recited in Claims 44 to 53 for example, are considered to be an obvious exercise of designer's choice for achieving desired operational characteristics of the unit, and not patentable distinctions absent a disclosure of criticality in the solution of stated problems with the use of any specific combination of motor and operational speeds.

5. Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt.

The particular conventional type of motor employed in the disposal unit is considered to be an obvious selection of mechanical equivalents to one skilled in the art depending merely on the operational characteristics desired.

6. Claim 97 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sones et al. in view of Egle (newly cited).

This claim requires the motor controller to also control operation of a water supply valve. Egle shows such an arrangement to be well known in the disposal art.

It would have been obvious to one having ordinary skill in the art to include a water supply valve control in the motor control of Sones et al., following the suggestion of Egle, in order to assure a proper flow of water during operation of the unit.

7. Claim 88 is additionally objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. This claim merely duplicates independent Claim 85.


Conclusion

8. Claims 62 to 65, 67, 68 and 73 to 75 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lowell A Larson whose telephone number is 571 272-4519. The examiner can normally be reached from 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached at 571 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'Lowell A Larson', written over a horizontal line.

Lowell A Larson
Primary Examiner
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LAL
February 4, 2005